IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 25 OF 2006
WITH
CIVIL APPLICATION NO. 38 OF 2006

Shri Rohidas Kuncolienkar,
son of Shri Ganesh Kuncolienkar,
major, married, agriculturist,
resident of Kuncoliem,
Mardol, Ponda-Goa. .... appellant

Versus

1. Shri Mahadev Nilu Gaudo,
son of Nilu Vishnu Gaude,
major, married, agriculturist,
and his wife;

2. Smt. Bovla Mahadev Gaudo,
major, housewife,
both residents of Orlem Poikul,
Melaulim, Sattari-Goa. .... Respondents

Shri Guru Shirodkar, Advocate for the Appellant.

Shri R.G. Ramani, Advocate for the Respondents.

CORAM : **P.V. KAKADE, J.**

DATE : **27th NOVEMBER, 2006**

ORAL ORDER :

Heard the learned Counsel for both the parties. Perused the record.

2. The appellant-plaintiff has preferred this appeal against the judgment and order passed by the Ad hoc Additional District Judge (Fast Track Court) Mapusa, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Junior Division, Sattari at Valpoi, dismissing the plaintiff's suit which was for declaration and perpetual injunction as a consequential relief.

3. On the basis of evidence on record, the trial Court came to the conclusion that plaintiff failed to prove that by virtue of sale deed dated 22nd August, 1984 they have been in possession of the first portion of the property involved and the second portion admeasuring 6800 sq. mts. from the entire property of survey no. 38/8. It was also held that the plaintiff did not prove that third portion of the said property was separated by a footpath and it was held that defendant proved that by sale deed dated 22nd August, 1984 they had purchased half of the property from survey no. 38/8 being Southern portion of area garden and Eastern portion of cashew garden constituting one plot representing half of survey no. 38/8 and, as such, the suit came to be dismissed. The appeal was carried to the District Court. The learned Ad hoc Additional District Judge, Mapusa did not find any fault with the judgment of the trial Court and dismissed the appeal.

4. In the course of hearing of the appeal at the admission stage, it is found that the lower appellate Court not only did not catch the real controversy between the parties which was involved in the dispute, but has relied upon extraneous consideration while coming to the conclusion that the trial Court judgment was legal and correct. At one stage, the lower appellate Court made a statement that there was no full disclosure of the case of the plaintiff and he had not come with clean hands, which is not even the case of the other parties nor there is any indication in the entire record as to how some facts were suppressed by the plaintiff and he was approaching Court with unclean hands.

5. In fact, the perusal of the judgment of the lower appellate court is apparent from its sketchy nature and haphazard approach to the dispute at hand, which makes amply clear that there is absolutely no application of the mind to the dispute, in order to balance and properly marshal the evidence on record. It is needless to mention that it is the task of the first appellate Court to go in to the details of the entire evidence on record and re-appraise the same so as to determine that whether the trial Court has properly appreciated the evidence or not. This aspect is totally lacking in the judgment and I have no option but to hold that it is the fit

case to remand the matter for adjudication afresh. The learned Counsel for the respondents vehemently urged that there is no substantial question of law involved. However, besides the facts in dispute, the very fact that lower appellate judgment does not disclose application of mind itself, is sufficient to show that it is the fit case to sent back for reappraisal of entire evidence on record so as to determine whether the trial Court has come to the correct conclusion or not. In the result, the order passed by the lower appellate Court dated 21/11/2005 is hereby set aside. Matter is remanded to the Ad hoc Additional District Judge, Mapusa for adjudication of the appeal afresh on the basis of available evidence and to dispose of the appeal within 3 months from the date of the receipt of the writ of this Court. A copy of this order be sent to the Ad hoc Additional District Judge (Fast Track Court), Mapusa (Mr. Anil Scaria) for his guidance.

6. With these directions, appeal stands disposed of with no order as to costs. Consequently, civil application no. 38 of 2006 also stands disposed of. Parties to maintain status quo with regard to the suit property as on today.

P.V. KAKADE, J.

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